IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.226 OF 2007

Broadcast Worldwide Ltd. .. Petitioner.
Vs.
TVC Skyshop Ltd. .. Respondent.

Mr.Anil Menon with Ms.Menon for the petitioner.
Mr.Sanjeev A.Sawant with Mr.Mohanti for the respondent.

CORAM : D.B.BHOSALE, J.
DATED : 6TH SEPTEMBER, 2007.

P.C.:

. Heard learned counsel for the parties.

2. The petitioner is a company engaged, inter alia, in the broadcasting of regional Television channels under the name "Tara". The respondent-company had requested the petitioner to carry certain advertisements on the Tara Bangla Channel. The petitioner accordingly allotted slots for advertisement to be aired on Tara Bangla from 5th December, 2004 to 4th January, 2005 on the terms and conditions set out in the letter dated 2nd December, 2004. Admittedly, advertisements were released on Tara Newz channel and not during the time agreed, that is, from 11.00 to 11.30 p.m. but from 11.30 to 12.00. It appears that without making any grievance about the change, that was made by the petitioner, from time to time similar release orders were issued

by the respondent-company and last such order was issued on 31.8.2005. There is no dispute that the advertisements were released during the aforesaid period. It appears that since the outstanding dues were not paid, some correspondence was exchanged between the two. Prior to 7.8.2005, the respondent-company did not make any grievance about non compliance of the terms and conditions mentioned in the letter dated 2nd December, 2004. On the contrary the respondent-company by their letter dated 12.9.2005 had clearly stated that they have every intention to clear the dues and since their advertisements were aired on Tara News they further asked the petitioner to reduced the rate, demanded by the petitioners, and agreed to clear the dues. In response to this letter the petitioner vide their letter dated 21st October, 2005 informed the respondent-company and offerred 10% special discount on the total amount due and requested them to pay an amount of Rs.9,27,000/-. This letter was replied by the respondent-company by letter dated 7th November, 2005. It would be relevant to reproduce the relevant part of their letter dated 7th November 2005 which reads thus:

> "We had communicated that we would be releasing the payments in installments starting from the month of November, The amount of Rs.9,27,000/- (arrived after the discount) would be paid in phased manner by

> first replacing one cheque of Rs.1,48,320/- and then over a period of time replacing the other two cheques of the same amount. Broadcast Worldwide would return the old cheques lying with you as and when the replacement cheque is handed over."

3. It is thus clear that the respondent-company had clearly accepted the liability. However, since the payment was not made a statutory notice was issued and in reply to the statutory notice they raised a dispute which in my opinion does not appear to be bonafide. In these circumstances the company petition for winding up has been filed and it has been duly served to the company. The reply affidavits, rejoinder and sur-rejoinder have also been filed by the parties. In my opinion, the circumstances show that the debt is due and payable.

4. However, in order to furnish the respondent with an apportunity to avoid the consequences of the admission of the Petition for winding up, it would be appropriate to pass a conditional order permitting the respondent to deposit the amount due and payable within time frame. Thereupon, the petitioner would be relegated to the remedy of filing a suit for the recovery of its dues together with interest and the amount so deposited would be credited to the account of the suit. Hence, the following order:

(i) Within a period of 3 months from the date of this order, the respondent shall deposit with the Prothonotary and Senior Master of this Court, an amount of Rs.9,27,000/-;

(ii) The petitioner is at liberty to file a suit before the competent court for the recovery of the said amount. The petitioner would be at liberty to institute a suit for the recovery of its dues within four months of intimation of deposit furnished by counsel for the respondent;

(iii) The amount deposited shall upon the institution of the suit stand transferred to the credit of the account of the suit;

(iv) The amount upon being transferred to the credit of the suit account shall be invested in a fixed deposit of a Nationalised Bank. The petitioner will be at liberty to move the concerned court seeking directions in regard to the money which is deposited;

(v) In the event, that the Respondent fails to deposit the amount as directed, the company petition shall stand admitted. In that event the petitioner to advertise the petition in "Free Press Journal",

"Nav Shakti" and also in Maharashtra Government Gazette. The petitioner to deposit Rs.10,000/- with the Prothonotary and Senior Master towards publication charges.

(vi) If no suit is instituted by the petitioner within the period stipulated, the respondent would be at liberty to apply for discharge of the security.

vii) Notice under Rule 28 of the Company (Court) Rules be issued to the respondent-company. In addition thereto the petitioner to give notice to the respondent-company intimating them about the admission of company petition within a period of four weeks from today.

4. The company petition is accordingly disposed of in the above terms.

(D.B.BHOSALE, J.)